IN THE

United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Continental National Bank, a Corporation,
Plaintiff in Error,

vs.

Mary Neville,
Defendant in Error.

ANSWERING BRIEF OF DEFENDANT IN ERROR.

GEORGE B. ROSS and
NEWBY & PALMER,
Attorneys for Defendant in Error.

Parker & Stone Co., Law Printers, 232 New High St., Los Angeles

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The action below was against the bank and one Fred Birdsall to recover $4400.00 deposited in the bank and drawn out by Birdsall. The third count of the complaint alleged that Mary Neville was a minor at the time of the transactions mentioned in the complaint; that Birdsall, shortly before the opening of the account with the bank entered into a bigamous marriage with Mary Neville (he having a wife living from whom he had not been divorced) for the purpose of procuring the money and property which constituted said Mary's estate; that Birdsall was an intimate friend and asso-

ciate of various officers of the bank; that Birdsall caused the employees and officers of said bank to enter upon their books containing said account of Mary Neville Birdsall the name of Fred Birdsall, so as to make it appear that said account was the joint account of said Mary and Fred; that said Birdsall caused said employees and officers of said bank to so alter and change said books and account so that Birdsall could withdraw Mary's money from the bank and convert it to his own use; that the employees and officers of said bank so negligently and carelessly conducted the business of said bank that they did, at the request of said Birdsall alone so alter and change their said books and the account of said plaintiff by adding the name of Fred Birdsall thereto, without the knowledge or consent of said plaintiff and without any authority whatever from plaintiff so to do; and they negligently and carelessly paid out the funds and estate of said Mary without her knowledge or consent or authority, upon checks signed by the defendant Birdsall only and drawn against her account without her knowledge or consent. That said Mary attained the age of eighteen years after all the transactions complained of.

This phase of the case seems to have been overlooked by appellant.

I.

STATEMENT OF FACTS.

We cannot agree to the conclusions of counsel from the evidence, especially as it is self-evident the jury

did not believe the evidence from which those conclusions are drawn.

The first item of the account, September 21st, 1920, $500.00, was a check sent Mary by her mother, Kate Neville. Mary testified:

"I endorsed the check and gave it to the defendant Birdsall to deposit in the Continental National Bank *for me.*" [Tr. p. 26.]

Birdsall took the check and brought her back a pass book that had the $500.00 entry in it and the name on it was "Mary Neville Birdsall." It did not have the name of Fred Birdsall on it. And he brought her a signature card that she did not sign and it was lost. [Tr. p. 27.]

A few days afterward Birdsall took Mary to the bank and introduced her to Frank Nichols [Tr. p. 65], who said he was president, and Nichols gave her another card and she signed it. [Tr. p. 28.] The signature card states on its face it is *"individual"* and was signed by Mary Neville Birdsall only; Birdsall did not sign a card that day, and Mary did not see a card he had signed that day. But she afterward saw a card signed by him (after the transactions were all closed) and it also was "individual." Both signature cards were prepared and received by Frank H. Nichols, president of the bank [Tr. p. 64], and he introduced Fred Birdsall to the bank and accepted both signature cards. [Tr. pp. 28-29.] The deposit ticket for the first $500.00, Sept. 21, 1920, which was produced when Mary Neville first came to the bank and

"raised a question as to whether there was a joint account," was in the handwriting of the president, Nichols. The bank had a "New Account Department" whose duty it was to handle new accounts. But notwithstanding this fact the president, Nichols, testified that he made an exception to this rule for Birdsall and opened the account himself. [Tr. p. 63.] When Birdsall deposited the $2500.00 check of Selover, given to Mary Neville Birdsall for the automobile her mother had given her, he took her to the bank with him. He made out the deposit ticket in her name only, and she saw him do that. It was after banking hours, and Birdsall took the deposit to a teller who received the check and gave Birdsall a *duplicate deposit slip* because Birdsall did not have the bank book with him. [Tr. pp. 29, 47 and 48.]

This $2500.00 was afterward entered on the pass book by Nichols, the president. [Tr. p. 65.] Nichols testified that he received this deposit personally, and that Birdsall had the pass book with him and he then entered it therein. [Tr. p. 64.] The jury did not believe him.

That the original ledger sheet of the bank showing this account had been altered, was admitted by Nichols, changing the word "and" to "or," so that checks against the account by Birdsall, only, could be honored. [Tr. p. 69.]

The course of the account itself tells the story of the looting of Mary. $500.00 check from mother is

deposited Sept. 21. [Tr. pp. 60 to 62.] This drops to a balance of but $57.85 in eight days. Sept. 29, Birdsall borrowed $400.00 from the bank and deposited it. It was placed in this account. He checked out of the account that same day on a certified check $400.73 to pay freight on an automobile. [Tr. pp. 69 and 70; 59-60.] Only two days afterward the automobile was sold to Mr. Selover for $2500.00 (Oct. 1), when the balance in the account was but $32.12. Oct. 2, Birdsall gave a check for $900.76 to the Continental National Bank [Tr. p. 39] to pay out of Mary's money, so realized from the sale of her automobile, his loans to that bank, one of which was secured by the signature of Frank R. Strong [Tr. pp. 69 and 70], and the other the $400.00 loaned him and placed in Mary Neville's account so he could draw out $400.73 to pay freight on the automobile.

Birdsall borrowed $400.00 from the bank and deposited it in Mary's account, drew a check for $400.73, which he procured to be certified, payable to the Southern Pacific Co. and dated the same day as the loan and deposit [Tr. pp. 59 and 60]; Nichols knew when Birdsall procured this check it was to pay freight on the automobile [Tr. pp. 69-70]; two days afterward Selover bought the automobile and gave $2500.00 check to Mary; this was deposited by Birdsall and the bank was immediately paid the $400.00 advanced to pay the freight and the $500.00 upon which Strong was security. Oct. 4, Birdsall deposited a check for $500.00.

Was this $500.00 his commission from Selover for the sale of the automobile? The evidence is silent on that, except for the inference that may be drawn from the fact that Birdsall was unable to raise seventy-three cents September 29 without checking on Mary's account. The automobile was sold Oct. 1, and Oct. 4 Birdsall had and deposited a check for $500.00 [Tr. p. 50] and on the same day paid to the bank by check $2035.00. [Tr. p. 41.]

Oct. 4 another $500.00 check from the mother, payable to Mary, endorsed by her "For deposit only," was deposited, and Birdsall produced the $500.00 check which was also deposited Oct. 4. On Oct. 4, $2035.00 was checked to the Continental National Bank for some purpose, and this and some small checks, left Mary with a balance of $9.85 out of $3500.00, in two weeks. Of this sum Mary had drawn just three checks for $113.60 for clothing, and the remainder, $3386.40, is the amount of the jury's verdict and of the judgment.

In order to get the full view of what happened to Mary, let us get the *"dramatis personae."*

Mrs. Kate Neville, mother and guardian of Mary, and who gave her $1000.00 and an automobile.

Mary Neville, seventeen years old, inexperienced country girl, who supposed she was the bride of Fred Birdsall.

Fred Birdsall, fifty-year-old man of the world, married and needing the money, and in the employ, as a

real estate agent, of the firm of Strong, McGrath and Selover, with offices at 1015 Marsh-Strong Building [Tr. p. 31], the building where the bank was located.

Frank R. Strong, stockholder and director of Continental National Bank, partner of Selover, employer of Birdsall, and security on Birdsall's note to Continental National Bank for $500.00. [Tr. pp. 70-72.]

Mr. Selover, partner in business with Strong, employer of Birdsall, purchaser from Birdsall of Mary's automobile for $2500.00 [Tr. p. 72], out of which Birdsall's debts to the bank, on $500.00 of which Strong was security, were paid the very day the $2500.00 check was deposited.

Frank H. Nichols, president of Continental National Bank, of which Frank R. Strong was a director and stockholder, friend of Birdsall, accommodating Birdsall with loans, taking Birdsall's statement about the deposit of checks payable to Mary (even when the check is endorsed "For deposit only" [Tr. p. 30]), with no authority whatever from Mary, either oral or written [Tr. pp. 52, 72]; and now attempting to save the bank from liability for his negligence in so handling the account that Birdsall had unlawfully looted it. And having actual notice that Birdsall was without funds of his own, because the bank had loaned him $500.00 upon the note for which one of its directors and stockholders was security (Strong), and also because he loaned Birdsall $400.00 to pay freight on the automobile of Mary, of course, with the understanding that

Birdsall should immediately sell the automobile and repay the bank out of those funds. And, in order that Birdsall could accomplish these things, it was necessary that he should handle Mary's funds. Nichols so arranged the matter with full notice of the facts.

II.

The entire argument of plaintiff in error is based upon the truthfulness of the testimony of Frank H. Nichols and the untruthfulness of the testimony of Mary Neville. But it is evident that the jury believed Mary and disbelieved Nichols, because that would justify the verdict.

The reason the jury disregarded the testimony of Frank H. Nichols is self-evident, even from the transcript. But in addition the jury saw him on the stand and were doubtless impressed by his shifty testimony, and his contradiction of other testimony, and his apparent interest in the result of the action.

Nichols testified that Birdsall came to him and opened the account as a joint account in the names of himself and Mary and that he (Nichols) wrote out the deposit slip in both names and made out the pass book in both names September 21, 1920. [Tr. pp. 63 to 66.]

The deposit ticket produced by the bank reads plainly "Fred Birdsall or Mrs. Mary Neville Birdsall [Tr. pp. 50-57]; but the original ledger sheet shows an alteration, being written in pencil and typewriting "Fred Birdsall and Mary Neville Birdsall" then the "and" changed to "or". [Tr. p. 69.] No attempt was made

by defendant to show when this change was made in the books. The original deposit ticket was left with the bank and if the bank would change its book, it would be a reasonable inference they would also change the deposit ticket, the ticket being in Nichols' writing and he having access thereto.

The deposit ticket bears no date and it is the only one which has a paid stamp on it, being stamped "Paid Sep. 21, 1920." As a matter of fact deposit tickets are not paid and it is not claimed this one was.

All the other deposit tickets were either in the name of Mary Neville Birdsall, or of Fred Birdsall; none of them in both names. Maurice J. Wolfe, auditor of the bank, testified that he did not see this joint ticket until October 15 or 16 [Tr. p. 62], after the question of a joint account was raised.

Mary testified that the pass book was brought to her by Birdsall and it had no name on it but her own [Tr. p. 27], and it would be a natural inference that if the pass book when brought to her had no name but hers, the original deposit ticket had no name but hers, also, and that the book and deposit ticket were both changed by Nichols, because both were in his handwriting.

Again: Nichols testified that he received the $2500.00 deposit ticket and check from Birdsall and entered the $2500.00 on the pass book at the time. [Tr. pp. 64-65.]

Mary testified that she got the $2500.00 check from Selover; that it was payable to her and she indorsed

it; that she and Birdsall went to the bank together to deposit it; that Birdsall made out the deposit ticket *in her name only* and delivered it to a teller; that it was after banking hours; that they did not see Nichols; that Birdsall did not have the pass book with him, and that the teller delivered a duplicate of the deposit ticket to Birdsall. [Tr. pp. 27, 47-48.]

Again: The signature card prepared by the witness Nichols for Mary to sign specifically stated that it was "individual"; nothing appears suggesting a joint account, or joint signature, or either of two signatures. [Tr. p. 28.]

Again: The witness Nichols testified that it was not customary in cases of joint accounts to have both signatures on the same card [Tr. p. 66], and floundered on the point on cross-examination and admitted they made such cards. [Tr. pp. 67-68; 73.]

Again: The witness Nichols testified that it was customary where a bank had a joint account, and a deposit ticket was made out in the name of either of such persons, to credit the deposit to the joint account without any orders or request. [Tr. pp. 67; 71.] This testimony cut the bank either way, *i. e.,* either it was untrue as the jury evidently was convinced, in which case the departure from custom in this case makes the bank liable; or it was true, in which case the custom was so negligent as to render the bank equally liable.

Again: The witness Nichols testified that his bank did not require the signatures of both depositors to a

check when the account was in the name of one "and" the other. [Tr. pp. 71-72.] This evidence shows negligence which renders the bank liable.

Again: Not one of Mary's checks were indorsed by Fred Birdsall. If they were deposited in Mary's account this was proper. But if they were deposited in the joint account, as claimed by defendant, then the name of Fred Birdsall on the back would show the change of ownership and tend to protect the bank in its action.

III.

Counsel say, brief p. 14:

"There is not in the evidence, a scintilla to indicate that the bank had any notice of the intention of the defendant in error to have these moneys deposited to her separate account or credit."

The signature card found in the bank, prepared by the president of the bank and signed by Mary, as both Mary and Nichols testify, acknowledges that the bank was dealing with her as an individual, and not as joint owner. Besides this the pass book as originally ade, and the deposit slip prepared in her presence in her individual name for the $2500.00 check, which was hers, and in her presence delivered to defendant's teller, and the duplicate deposit ticket in her name only delivered in her presence to Birdsall for her, and each of her other checks bearing her indorsement only, one "for deposit only" and her deposit tickets show that the bank had full knowl-

edge of the situation, and that the account was hers only.

That the bank had knowledge that it was necessary to have both names on one card is shown by the card prepared for Birdsall which shows at the place for signature "Fred Birdsall *or*"— [Tr. p. 29.]

The truth is as the jury found, that, to say the very least, the bank was so negligent in permitting Fred Birdsall to draw this money without any authority from Mary Neville, the owner, so to do, that they must repay it.

The jury was not only fully justified in finding a verdict in favor of Mary Neville, but there was evidence of a compelling nature that demanded such a verdict.

It is said by the court in United States v. 323 Packages of Kil-Tone, 279 Federal 398, 401:

> "It is beyond the power of this court to re-examine the facts as found by the jury. If the court committed no substantial error upon the trial, the verdict and judgment entered thereupon cannot be disturbed."

See

American Trading Co. v. North Alaska etc. Co., 248 Fed. 665, 667.

"Federal Appellate Court cannot disturb the finding of a jury on a question of fact. if there is any competent evidence to support the verdict."

Tate v. Baugh, 264 Fed. 892;

Manf. Life Ins. Co. v. Brennan, 270 Fed. 173;

John A. Crowley Co. v. Clark Equip. Co., 263 Fed. 58.

IV.

It is erroneous to say the instructions of the court to the jury were contradictory. In giving the instructions the court very carefully adapted them to the evidence in the case.

There was evidence from which the jury might have believed that Mary Neville indorsed the checks and delivered them to Fred Birdsall in such manner that the bank would have been protected in paying them to Birdsall, or depositing them as he directed. But there was also evidence from which the jury might have believed, and evidently did believe that the bank had "information which would put them upon notice to the contrary." The jury evidently believed that the account was originally opened in the name of Mary Neville Birdsall only, and the deposit was in her name alone.

Appellant has separated three portions of the instructions from their surroundings and argues that they are contradictory and asks a reversal on that ground.

In Seaboard Air Line R. Co. v. Padgett, 236 U. S. 668, 672, 59 L. Ed. 777, 780, the Supreme Court holds:

> "Whether the instructions could have produced misconception in the minds of the jury is not to be ascertained by merely considering isolated statements, but by taking into view all the instructions given and the tendencies of the proof in the case to which they could possibly be applied."

That the instructions are to be construed together, and not piece meal, is held in

Puget Sound etc. v. Schleif, 220 Fed. 48;

Stevenson v. Atlantic Terra Cotta, etc., 230 Fed. 14, 22;

and many other cases.

This is the long settled rule of the federal courts.

The court instructed the jury fully and fairly. Among other things the court said:

"The burden of proof is on the plaintiff. The plaintiff must prove her case by a preponderance of the evidence. Among the things that the plaintiff must prove is the fact that the money for which she sues was her separate property and that the deposits made in the bank *were made for her sole use and benefit.*" [Tr. p. 75.] * * *

"Any entry by a bank in a pass book of a depositor in the usual form crediting him with a certain sum deposited does not constitute a written contract between the parties but is merely evidence in the nature of a receipt for the deposit and may be explained or contradicted by oral testimony." [Tr. p. 77.] * * *

"The usage of banks in respect to the powers and duties of its officers so far as such usage is known to the business public enters into and qualifies the contracts made by such banks through their officers. Custom and usage, if reasonable, have a binding force between the bank and the customer." [Tr. p. 77.] * * *

"This is an action prosecuted by the plaintiff to recover from the defendant Continental National Bank and Birdsall certain moneys alleged in the complaint to

have been deposited with said *defendant bank in the name of or for the account of plaintiff, Mary Neville Birdsall, or Mary Neville.*" [Tr. p. 78.]

"If you find from the evidence that any of said sums of money were deposited to a separate account of the plaintiff, Mary Neville Birdsall, then your verdict should be for said plaintiff for the amount of money so deposited less the aggregate amount of checks which you may find from the evidence to have been drawn on said account by said Mary Neville Birdsall and paid by said defendant bank." [Tr. p. 79.] * * *

"The endorsement or assignment of a negotiable check by an infant or minor passes the property therein notwithstanding that from want of capacity the infant or minor may incur no liability thereon. That is to say, by incurring a liability means that they are not liable on an endorsement.

"I have stated to you that a minor cannot bind (himself) by an agent, *and any instruction given to the defendant bank by Birdsall would not bind the plaintiff except to the extent that the endorsement by her to Birdsall would create an apparent ownership in the said Birdsall of said check. To that extent she had a right and was bound by such apparent ownership when presented to the bank and the bank had a right to draw any reasonable inference from that fact, that the said Birdsall had a right to direct how the deposit should be made but* had no right to give such directions to the bank except by virtue of that fact.

"In receiving said deposit the defendant bank had a right to assume that any check presented to said bank for deposit was owned by the party presenting the check, provided the check was duly endorsed without limitation of the endorsement by the payee thereof and

the bank had no information which would put them upon notice to the contrary." [Tr. pp. 80-81.] * * *

"In determining whether or not any particular item was deposited to the credit of the plaintiff or to the joint or several credit of the plaintiff and Fred Birdsall you shall determine from the evidence what was the agreement of the party making the deposit in the bank.

"In using the word 'the party may deposit' you shall not understand that I am referring to Fred Birdsall as an individual acting in the case, but you are to determine whether the transaction showed that such deposit was made by Mary Neville or by Fred Birdsall for her use and benefit.

"In determining any question in the case you shall take into consideration all the evidence introduced and the circumstances surrounding any particular facts or act of the parties.

"The evidence introduced here shows a pass book of the bank made out showing that the deposits were made to the account of Fred Birdsall or Mary Neville Birdsall. The plaintiff contends that she never saw that pass book with the name Fred Birdsall written in it. A question for you to determine is whether or not, upon the making of said first deposit, a different pass book was made out by the bank and that she saw such different pass book made out by the bank. *If the only pass book that the bank made is the one introduced in evidence and that pass book was tendered at the time of making of any deposit you have a right to take that into consideration in determining the question as to whether or not said sums were deposited to the plaintiff's credit or to the joint or several account of Fred Birdsall and the plaintiff.*" [Tr. pp. 81-82.] * * *

"A deposit slip made out by a party and presented

to the bank at the time of the deposit is a direction to the bank to credit said deposit to the name of the party appearing on the deposit slip and the bank has no legal right to place said money to the credit of any other person or persons. *The deposit slip, however, may be controlled by other evidence; that is to say, the deposit slip is not conclusive as a direction to the bank to whom the deposit shall be made. Oral directions may be given or other instructions may show that the party intended the deposit should be made in the name of some other party than that on the deposit slip.*

"If you find from the evidence that the plaintiff did not know that there was a joint and several account in the defendant bank, then she would not be bound by a deposit of her money in the bank in such joint and several account. The presentation of a pass book to the bank at the time of making a deposit is evidence of what the depositor intended the bank to do and should be considered in connection with the deposit slip. Such book, however, would not bind the plaintiff in any way unless she knew of the existence of such pass book.

"If Fred Birdsall presented a check to the bank which was payable to Mary Neville Birdsall and duly endorsed by her, and at the same time that said check was presented for deposit, a deposit slip to the effect that said money should be deposited to Mary Neville Birdsall, then the bank had no right to credit such deposit to the joint and several account of Fred Birdsall and Mary Neville Birdsall but should have credited it solely to Mary Neville Birdsall." [Tr. pp. 82-83.]

The instructions of the court, far from being contradictory merely accommodated the law to the evi-

dence as the jury might determine the facts to be. If there was no dispute as to the facts, the law could be stated by the court succinctly and with no provision for variation. But the dispute as to facts here was radical and ireconcilable. The jury must determine whom they would believe. They were told they must consider all of the evidence in arriving at a verdict. If they believed one line of evidence the rule of law would be thus; if they believed the other line then the law would be so.

This is the approved method of giving the law to a jury. It was not the law given, but it was the evidence, that was contradictory.

In Memphis St. Ry. Co. v. Pierce, 257 Fed. 659, 662, the court holds:

> "We must consider the instructions of the court as a whole. So regarded, they are found to conform to well-settled law and there is no ground for inference that the jury was misled. We see no fair opportunity to presume that, if the criticisms of plaintiff in error to this charge were met in a new presentation of the same facts to a jury, the verdict might reasonably be otherwise than it was here."

In Massee v. Williams, 207 Fed. 222, 234, the court said:

> "It was the court's duty to charge the law arising upon the facts as applicable to such facts so as to aid the jury in arriving at a correct conclusion."

V.

The entire argument of the brief at "III," pages 22 to 27 inclusive, is based upon the assumption that the testimony of defendant below was and is true and that plaintiff's testimony was and is untrue. The finding of the jury precludes such as assumption. This instruction, taken in connection with other instructions of the court, merely states that if Fred Birdsall came with a check made payable to Mary Neville Birdsall and duly indorsed by her and presented it at the bank with a deposit ticket to the effect that said money should be deposited to Mary Neville Birdsall the bank had no right to disregard these instructions and deposit in some other account. This is undoubtedly the law. Of course if Birdsall had given some other instructions in addition to the presentation of the check and deposit slip, that might have had a different effect, as the court had repeatedly told the jury in other parts of the charge. [See Tr. pp. 75, 76, 78, 79, 80, 81, 82, 83.]

VI.

Counsel claim (Brief p. 23) that the crediting of the deposits of Mary's money to the joint account was justified by the mere presentation of the deposit ticket which directed the deposit to the account of Mary Neville Birdsall, and say that the deposit to the joint account was a deposit to the credit of Mary Neville Birdsall. The result as depicted by the evidence disproves the claim. She put in $3500.00, drew out

$113.60, and had a balance in her account of $9.85. It is well settled law that the relation between depositor and bank is one of contract. (3 R. C. L., p. 516.) *There is not even a pretence of evidence in this case that Mary Neville ever authorized or even knew that her money was deposited in a joint account.* Every particle of direct evidence on the subject is to the effect that she did not know that fact. She was led to believe by her husband and by the bank that her account was individual.

VII.

Counsel gives certain reasons why the instruction was erroneous. (Br. p. 24.) We answer seriatim:

(a) The fact that the check was payable to Mary Neville Birdsall did raise so strong a presumption of ownership in her favor that her indorsement was required to procure its payment or acceptance by the bank as a deposit. It may be that her indorsement, without any other circumstances except that the check was in the possession of Fred Birdsall, would be *prima facie* evidence that the check belonged to Birdsall. But there is no pretense that he claimed to own the check. He did not endorse it. He did not direct its deposit to the joint account. He made out the deposit ticket in the name of Mary Neville Birdsall and delivered both to the bank. The bank thereupon credited the deposit to a joint account and paid it out on Birdsall's check.

(b) The instruction merely states that if the transaction consisted of the presentation by Birdsall of a check payable to Mary and endorsed by her, accompanied by a deposit ticket in her name only, 'with nothing more,' the bank had no right to place the deposit in a joint account.

(c) The instruction excludes nothing. It leaves the matter to be determined by the jury.

The case at bar is of a similar nature to that of

Brown v. Dougherty, 120 Fed. 526; and see

Rodgers v. The Bank of Pike County, 69 Mo. 560;

Bates v. First Natl. Bank, 89 N. Y. 286.

In the case of Bates v. Natl. Bank, *supra,* the holding was that the indorsement of the checks in blank, and the delivery thereof to the husband were sufficient to make him the apparent owner, but when he made the deposit in the name of his wife, and took the pass book in her name, it disclosed the fact of his agency only to the extent of making the deposit for her. The situation then was that the bank was bound to recognize the wife as the owner and pay only upon her order.

In the case at bar the evidence was conflicting as to whether the original deposit was in the wife's name and the jury evidently found it was, so the bank had notice that Birdsall was the agent of his wife for deposit only and one of the checks was so indorsed by her.

A man who deposits money in a bank in his wife's name may not check it out in his own name if it is her separate property, without her express authority. A bank which permits it is liable to the wife.

Brown v. Daugherty, 120 Fed. 526, 533-536;
Bates v. Bank, 89 N. Y. 286;
Honig v. Bank, 73 Cal. 464, 469;
Kerr v. Bank, 158 Pa. St. 305;
Armstrong v. Johnson, 93 Mo. App. 492;
Paton, Legal Opinions, p. 304, Secs. 1333, 1339.

See the case of Honig v. Bank, 73 Cal. 464, where a deposit was made by an agent in the name of the principal "by" the agent and afterward drawn out by the agent signing the principal's name by the agent. The bank was held liable to the principal.

The deposit slips or tickets introduced in this case were writings prepared by the agent of the depositor to accompany the deposit and were a memorandum showing what the deposit was, its amount and was a written direction, or instruction, to what account the money was to be credited. These slips were not prepared or issued by the bank. The bank received them from the depositor's agent and retained them as a part of its record of the transaction. The authorities cited by counsel have no reference whatever to the papers introduced in evidence in the case at bar and referred to in the record and briefs as "deposit slips" or "deposit tickets."

It is evident that the jury believed that Birdsall was made the agent of Mary merely to deposit her checks, and that the pass book was originally made out in her name only, and that when Birdsall showed it to her it was not a "joint and several" pass book.

> "Where it is evident that a correct result has been reached, questions concerning the correctness of particular rulings, not affecting such result, are immaterial."
>
> Weiner v. Union Trust Co., 261 Fed. 709.

There is no prejudicial error in the record. The claim of estoppel is unsupported by equity, law or fact. The judgment should be affirmed.

GEORGE B. ROSS and
NEWBY & PALMER,
Attorneys for Defendant in Error.